

REMARKS

Claims 1-9 and 14-16 were pending as of the Office Action mailed April 14, 2009. Claim 1 is in independent form. Claims 1 and 8 are amended and claims 3, 4, 6, 7, 9, and 14-16 are cancelled without prejudice to Applicant's right to pursue the cancelled or amended subject matter. Claims 17 and 18 are newly presented for consideration. No new matter has been added. Support for the amendments to the claims and the new claims may be found within the applicant's specification at least at page 3, line 22, page 4, lines 15-17, and in claim 6 as originally filed and in original claim 5 of US Application No. 10/292,999, incorporated by reference into the present application at page 1, lines 4-5 of the specification.

Reconsideration and reexamination of the application is respectfully requested in light of the foregoing amendments and the following remarks.

Interview Summary

The undersigned, James W. Peterson, would like to thank Examiner Isis A. Ghali for the Interview Summary mailed May 4, 2009, which he agrees is a complete and accurate statement. Specifically, Mr. Peterson accepts Examiner Ghali's amendment to the first paragraph of section 3 of the April 14, 2009 Office Action as set out in the Interview Summary.

Section 103 Rejections

Claims 1-9 and 14-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lachman et al. in combination with the article "Encyclopedia of Pharmaceutical Technology," U.S. 5,955,102, and US 5,817,323. Without acquiescing to the propriety of the rejection, and solely to expedite prosecution of the claims, Applicant has amended the claims as set forth above. Applicant emphasizes for the record that Applicant does not concede the unpatentability of the previously pending claims and expressly reserves the right to prosecute the canceled subject matter in one or more related applications.

Applicant respectfully submits that Applicant's showing of commercial success and the satisfaction of a long-felt need in the Declarations of Joar Opheim dated September 21, 2006 and January 16, 2009 and the Declaration of Oliver Cooperman, dated March 29, 2007, is sufficient to rebut any conclusion of obviousness with respect to the presently claimed subject matter. In particular, the claims are presently drawn to a flavored capsule

encapsulating a dose of fish oil, wherein the capsule comprises *inter alia* about 1.5% water soluble lemon flavoring. Applicant respectfully submits that the Opheim Declaration dated January 16, 2009 establishes that the embodiments of the invention which achieved commercial success and satisfied a long-felt need were flavored capsules encapsulating a dose of fish oil, wherein the capsule comprises *inter alia* about 1.5% water soluble lemon flavoring. Accordingly, Applicant respectfully submits that Applicant's evidence of commercial success and satisfaction of a long-felt need correspond exactly in scope to the present claims and therefore suffice to rebut any conclusion of obviousness.

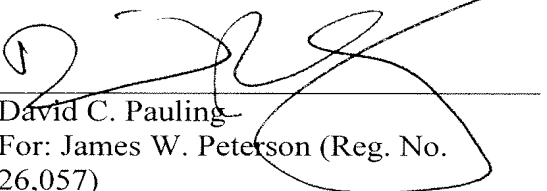
Withdrawal of the rejection under 35 U.S.C. § 103(a), is therefore respectfully requested.

Conclusion

The applicant respectfully requests that all pending claims be allowed. The Examiner is hereby invited to contact the undersigned at (650) 739-3949 should any issue remain.

Respectfully submitted,

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